

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SCIELE PHARMA, INC. and SCIELE
PHARMA CAYMAN LTD.,

Plaintiffs,

v.

MYLAN PHARMACEUTICALS, INC. and
MYLAN LABORATORIES, INC.,

Defendants.

C.A. No. 07-664-GMS

**PLAINTIFFS' MOTION FOR LEAVE TO FILE A SUR-REPLY IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT FOR LACK OF
STANDING AND SUBJECT MATTER JURISDICTION**

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Dated: February 11, 2008

Plaintiffs Sciele Pharma, Inc. and Sciele Pharma Cayman, Ltd. (collectively, “Sciele”) request leave to file a short sur-reply to respond to Defendants Mylan Pharmaceuticals, Inc. and Mylan Laboratories, Inc.’s (collectively, “Mylan”) Reply Memorandum in Support of their Motion to Dismiss for Lack of Standing. [D.I. 20] A copy of Sciele’s Sur-Reply is attached as Exhibit 1.

Because Mylan chose not to contact Sciele before filing its Motion to Dismiss, Mylan did not include arguments regarding the 2004 and 2007 Agreements in its opening brief. Instead, Mylan based its opening brief solely on the outdated 2001 Agreement, and Mylan’s entire argument on the relevant 2004 and 2007 Agreements appears only in its reply brief, to which Sciele is not entitled to respond. Because Mylan should not have reserved for its reply brief arguments that it should have made in a full and fair opening brief (LR 7.1.3(c)(2)), and because the 2004 and 2007 Agreements are central to the standing issue to be decided by this Court, Sciele respectfully requests leave to file the attached brief sur-reply paper to provide Sciele a short opportunity to respond to Mylan’s arguments on the 2004 and 2007 Agreements.

Dated: February 11, 2008

FISH & RICHARDSON P.C.

By: /s/ William J. Marsden, Jr.

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Attorneys for Plaintiffs SCIELE PHARMA, INC.,
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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2008, I electronically filed with the Clerk of Court **PLAINTIFFS' MOTION FOR LEAVE TO FILE A SUR-REPLY IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT FOR LACK OF STANDING AND SUBJECT MATTER JURISDICTION** using CM/ECF which will send electronic notification of such filing(s) to the following Delaware counsel. In addition, the filing will also be sent via hand delivery:

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I also certify that on February 11, 2008, I have sent by electronic mail and U.S. First Class Mail, the document(s) to the following non-registered participants:

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/s/ William J. Marsden, Jr.

William J. Marsden, Jr.

EXHIBIT 1

SEALED DOCUMENT